evidence clearly established that the ilmenite, was the property of the plaintiff and was commercially valuable, that very considerable quantities thereof had been stockpiled by the plaintiff on the lands aforesaid and so the inevitable conclusion is that the Judge was amply justified in giving judgment for the plaintiff as prayed for in the originating summons save and except as to damages. In these circumstances, the present case comes nowhere near the range of those cases where an appellate Court would be justified in disturbing the findings of fact arrived at by the Judge after a careful analysis of the evidence. (See *Tan Sri Khoo Teck Puat & Anor. v. Plenitude Holdings Sdn. Bhd.* [1993] 2 CLJ 146). Indeed, upon the evidence, no other verdict was possible.

In the result, we have no hesitation in dismissing this appeal with costs and affirming the judgment of the Court below. Deposit to be paid to the plaintiff to account of taxed costs.

TAN SUNG MOOI (F)

v.

TOO MIEW KIM

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI HAJI ABDUL HAMID BIN OMAR LP,
TAN SRI DATUK GUNN CHIT TUAN CJ (MALAYA)
TAN SRI DATUK EDGAR JOSEPH JR SCJ
TAN SRI DATO' MOHD EUSOFF BIN CHIN SCJ
DATO' MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ
[APPEAL NO. 3 OF 1993]
1 AUGUST 1994

JURISDICTION: Dissolution of marriage - One party converting to Islam after dissolution - Claim for ancillary relief - Whether High Court has jurisdiction to hear application - Consideration of s. 3 of the Law Reform (Marriage & Divorce) Act 1976 - Whether the said s. 3 unconstitutional in the light of Articles 11(1) & 121(1A) of the Federal Constitution - Whether High Court entitled to exercise its continuing jurisdiction to grant ancillary relief in view of the fact that the High Court had dissolved the marriage.

STATUTORY INTERPRETATION: Law Reform (Marriage & Divorce) Act 1976, s. 3 - Legislative intent - Overall purpose of the Act - Whether legal obligations under a non-Muslim marriage can be extinguished or avoided by conversion to Islam.

The parties hereto were married according to Chinese customary rites on 20 February 1964. On a petition by the wife, the High Court dissolved the marriage on 17 December 1991 and granted a decree nisi to be made absolute after three months on the ground that the marriage had irretrievably broken down.

Pending the decree nisi being made absolute, the petitioner filed an application under ss. 76 and 77 of the Law Reform (Marriage & Divorce) Act 1976 (the Act) for an order of division of matrimonial assets and for maintenance. The respondent opposed the application on the grounds that the High Court had no jurisdiction over him with respect to the ancillary relief arising from the divorce because of his conversion to Islam on 9 January 1993.

On an application for reference to the Supreme Court under s. 48 of the Courts of Judicature Act 1964, the learned Judicial Commissioner

referred the following questions for the opinion of the Supreme Court:

(1) Is s. 3 of the Act unconstitutional, in the light of Articles 11(1) and 121(1A) of the Federal Constitution?
(2) Is the High Court entitled to exercise its continuing jurisdiction to grant ancillary relief, in view of the fact that the High Court had dissolved the marriage?

Held:

[1] Section 3(3) of the Act provides that the Act shall not apply to Muslims or Muslim marriages and that only non-Muslim marriages may be solemnised or registered. This clearly means that the Act only applies to non-Muslims and non-Muslim marriages.

[2] In the present reference, it is common ground that both parties were non-Muslims who contracted a non-Muslim marriage. The High Court dissolved the said marriage and thereafter the petitioner filed an ancillary application under ss. 76 and 77 of the Act. From the facts, it was beyond doubt that the Act applied to the parties since they were non-Muslims.

[3] It follows that as the petitioner's application under ss. 76 and 77 of the Act concerned matters affecting both parties legal obligations as non-Muslims and was incidental to the granting of the divorce, the High Court would have jurisdiction to hear and determine the ancillary proceedings despite the fact that the respondent converted to Islam after the divorce but before the hearing of the ancillary application.

[4] The second part of s. 3(3) makes reference to s. 51 of the Act. Neither the language of s. 3 nor s. 51 of the Act is sufficiently precise in dealing with the issue of the jurisdiction of the High Court in the present circumstance. However, from the wordings of s. 51(2) of the Act, the Legislature clearly intended to provide ancillary relief for non-Muslim spouses and the children of the marriage as a result of one party's conversion to Islam. By implication from s. 51(2), the High Court, in the present reference, has jurisdiction to hear and determine the ancillary issues.

[5] It would result in grave injustice to non-Muslim spouses and children whose only remedy would be in the civil Courts if the High Court no longer has jurisdiction, since the Syariah Courts do not have jurisdiction over non-Muslims. In the context of the legislative intent of s. 3 and the overall purpose of the Act, the respondent's legal obligations under a non-Muslim marriage cannot be extinguished or avoided by his conversion to Islam.

[6] Section 3 of the Act is not unconstitutional. Insofar as s. 3(3) of the Act provides that the Act shall not apply to Muslims, this is consistent with Article 11(1) of the Federal Constitution which provides that every person has the right to profess and practise his religon.

[7] Article 121(1A) of the Federal Constitution has taken away the jurisdiction of the High Courts in respect of matters falling within the jurisdiction of the Syariah Courts. It was clear from a reading of s. 45(3)(b) of the Selangor Administration of Muslim Law Enactment 1952 that the Syariah Court would not have jurisdiction over the petitioner who is a non-Muslim. It follows that Article 121(1A) of the Federal Constitution does not affect the jurisdiction of the High Court to hear the application under ss. 76 and 77 of the Act.

[Question (1) answered in the negative. Question (2) answered in the affirmative. Case remitted to High Court for final disposal of ancillary application].

[Bahasa Malaysia Translation of Headnote]

BIDANG KUASA: Pembubaran perkahwinan - Satu pihak memeluk Islam selepas pembubaran - Tuntutan bagi relief sampingan - Sama ada Mahkamah mempunyai bidang kuasa untuk mendengar permohonan - Pertimbangan akan s. 3 Akta Membaharui Undang-undang (Perkahwinan & Penceraian) 1976 - Sama ada s.3 tersebut tidak berperlembagaan apabila melihat kepada Perkara 11(1) & 121(1A) Perlembagaan Persekutuan - Sama ada Mahkamah Tinggi berhak untuk mengamalkan bidang kuasa keberterusannya untuk memberikan relief sampingan apabila melihat kepada fakta bahawa Mahkamah Tinggi yang telah membubarkan perkhawinan tersebut.

PENTAFSIRAN STATUTORI: Akta Membaharui Undang-undang (Perkahwinan & Perceraian) 1976, s. 3 - Maksud perundangan - Tujuan keseluruhan Akta tersebut - Sama ada obligasi yang sah di bawah suatu perkahwinan bukan Muslim boleh terhapus atau dielakkan melalui pemelukan Islam.

Pihak-pihak dalam kes ini telah berkahwin mengikut adat Cina pada 20 Februari 1964.

Atas suatu permohonan oleh isteri, Mahkamah Tinggi telah membubarkan perkahwinan tersebut pada 17 Disember 1991 dan memberikan suatu dekri nisi supaya dijadikan mutlak selepas 3 bulan atas alasan bahawa perkahwinan tersebut telah retak tanpa boleh disatukan semula.

Sementara menunggu dekri nisi dijadikan mutlak, pempetisyen telah memfailkan suatu permohonan di bawah ss.76 dam 77 Akta Membaharui Undang-undang (Perkahwinan & Perceraian) 1976 (Akta tersebut) untuk perintah bagi pembahagian aset-aset suami-isteri dan nafkah. Responden telah menentang permohonan tersebut atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa ke atasnya berhubung dengan relief sampingan yang berbangkit daripada penceraian disebabkan pemelukan Islam olehnya pada 9 Januari 1993.

Atas suatu permohonan untuk merujuk kepada Mahkamah Agung di bawah s. 48 Akta Mahkamah Kehakiman 1964, Pesuruhjaya Kehakiman yang berkenaan telah merujuk persoalan-persoalan berikut untuk pendapat Mahkamah Agung:

(1) Adakah s. 3 Akta tersebut tidak berperlembagaan apabila melihat kepada Perkara 11(1) dan 121(1A) Perlembagaan Perseketuan?
(2) Adakah Mahkamah Tinggi berhak untuk mengamalkan bidang kuasa keberterusannya untuk memberikan relief sampingan apabila melihat kepada fakta bahawa Mahkamah Tinggi telahpun membubarkan perkahwinan tersebut?

Diputuskan:

[1] Seksyen 3(3) Akta tersebut memperuntukan bahawa Akta tersebut tidak akan terpakai ke atas orang-orang Muslim atau perkahwinan Muslim dan bahawa hanya perkhawinan bukan Muslim yang boleh diupacarakan atau didaftarkan. Ini jelas bermakna bahawa Akta tersebut hanya terpakai keatas orang-orang bukan Muslim dan perkahwinan bukan Muslim.

[2] Dalam rujukan semasa ini, kedua-dua pihak merupakan bukan Muslim yang telah melangsungkan perkahwinan secara bukan Muslim. Mahkamah Tinggi telah membubarkan perkahwinan tersebut dan selepas itu pempetisyen telah memfailkan suatu permohonan sampingan dibawah ss. 76 dan 77 Akta tersebut. Daripada fakta-faktanya tidak syak lagi bahawa Akta tersebut terpakai keatas pihak-pihak tersebut memandangkan mereka bukan Muslim.

[3] Oleh kerana permohonan pempetisyen di bawah ss. 76 dan 77 Akta tersebut melibatkan obligasi yang sah di antara kedua-dua pihak selaku bukan Muslim dan bersampingan kepada pemberian penceraian, Mahkamah Tinggi mempunyai bidang kuasa untuk mendengar dan memutuskan prosiding sampingan walaupun responden telah memeluk Islam selepas penceraian tetapi sebelum pendengaran permohonan sampingan tersebut.

[4] Bahagian kedua s. 3(3) merujuk kepada s. 51 Akta tersebut. Kedua-dua s. 3 dan s. 51 Akta tersebut tidak cukup tepat dalam berurusan dengan isu bidang kuasa Mahkamah Tinggi dalam keadaan semasa ini. Walau bagaimanapun daripada perkataan yang digunakan dalam s. 51(2) Akta tersebut, Perundangan jelas bermaksud untuk membekalkan relief sampingan bagi suami-isteri bukan Muslim dan anak-anak hasil daripada perkahwinan tersebut yang berbangkit dari satu pihak yang memeluk Islam. Atas implikasi daripada s. 51(2), Mahkamah Tinggi dalam rujukan semasa ini mempunyai bidang kuasa untuk mendengar dan memutuskan isu-isu sampingan.

[5] Sekiranya Mahkamah Tinggi tidak mempunyai bidang kuasa, maka suami-isteri bukan Muslim dan anak-anak mereka akan mendapat ketidakadilan memandangkan Mahkamah Syariah tidak mempunyai bidang kuasa keatas orang-orang bukan Muslim. Dalam konteks maksud perundangan s. 3 dan keseluruhan tujuan Akta tersebut, obligasi sah responden dibawah suatu perkahwinan bukan Muslim tidak boleh terhapus atau dielakkan melalui pemelukan Islam oleh beliau.

[6] Seksyen 3 Akta tersebut bukan merupakan tidak berperlembagaan. Sejauh mana s. 3(3) Akta tersebut memperuntukkan bahawa Akta tersebut tidak akan terpakai ke atas orang-orang Muslim, ia adalah selaras dengan Perkara 11(1) Perlembagaan Perseketuan yang memperuntukkan bahawa setiap orang mempunyai hak menganut dan mengikuti ugamanya.

[7] Perkara 121(1A) Perlembagaan Perseketuan telah mengambil keluar bidang

kuasa Mahkamah Tinggi berhubung dengan perkara-perkara yang tergolong dalam bidang kuasa Mahkamah Syariah. Atas pembacaan s. 45(3)(b) Enakmen Pentadbiran Undang-undang Islam Negeri Selangor 1952, jelas bahawa Mahkamah Syariah tidak akan mempunyai bidang kuasa ke atas pempetisyen yang merupakan seorang yang bukan Muslim. Maka perkara 121(1A) Perlenbagaan Perseketuan tidak menjejaskan bidang kuasa Mahkamah Tinggi untuk mendengar permohonan di bawah ss. 76 dan 77 Akta tersebut.

[Soalan (1) dijawab secara negatif. Soalan (2) dijawab secara afirmitif. Kes dibawa ke Mahkamah Tinggi untuk permohonan sampingan tersebut diselesaikan secara muktamad].

Cases referred to:
Northman v. Barnet Council [1978] 1 WLR 221 ***(refd)***
Letchumy v. Ramadason [1984] 1 MLJ 143 ***(ovrld)***
Dalip Kaur v. Pegawai Polis Daerah Bukit Mertajam & Anor. [1992] 1 SCR 257 ***(refd)***
Mohd. Habibullah bin Mahmood v. Faridah bt Dato' Talib [1993] 1 SCR 229 ***(refd)***

Legislation referred to:
Administration of Islamic Law (Federal Territories Act 1993
Courts of Judicature Act 1964, ss. 24(a), 48
Federal Constitution, Articles 11(1) & 121(1A)
Law Reform (Marriage & Divorce) Act 1976, ss. 3(1), (2) & (3) 51, 53, 76, 77
Married Women and Childern Maintenance Act 1950 (Revised 1981), s. 9
Selangor Administration of Muslim Law Enactment 1952, s. 45(3)

Other sources referred to:
Bennion's Statutory Interpretation, 2nd Edn., 1992 p. 362
Coke 4 Inst. 330

For the appellant - Balwant Singh Sidhu; M/s. Balwant Singh Sidhu & Co.
For the respondent - Pawancheek bin Marican; M/s. Syarikat Sivam.

JUDGMENT

Mohamed Dzaiddin bin Hj Abdullah SCJ: This was a reference in the form of a special case from the High Court Kuala Lumpur made under s. 48 of the Courts of Judicature Act 1964.

Both the petitioner and the respondent, who are Malaysian-born Chinese, were married according to Chinese customary rites on 20 February 1964 and cohabited in Malaysia until April 1982, when they decided to live apart. Some time in March 1988, the petitioner left the matrimonial home. On 22 November 1989, the petitioner filed a divorce petition under s. 53 of the Law Reform (Marriage & Divorce) Act 1976 (the Act) on the ground that her marriage with the respondent had irretrievably broken down. On 17 December 1991, the Kuala Lumpur High Court dissolved the marriage and granted a decree nisi to be made absolute after three months. In the meanwhile, pending the decree nisi being made absolute, the petitioner on 24 December 1991 filed an application against the respondent under ss. 76 and 77 of the Act for an order of division of matrimonial assets and for maintenance. The respondent opposed the petitioner's application on several grounds, but in a subsequent affidavit, he raised the issue that the High Court had no jurisdiction over him with respect to the ancillary relief arising from the divorce because of his conversion to Islam. In fact, on the direction of the Court, he affirmed an affidavit on 15 April 1993, deposing that he embraced Islam on 9 January 1993 at Jabatan Agama Islam, Wilayah Persekutuan, and had taken the name of Abdul Halim Too bin Abdullah.

On 24 May 1993, the learned Judicial Commissioner heard an application for reference to the Supreme Court under s. 48 of the Courts of Judicature Act 1964. The respondent contended that being a Muslim, the High Court no longer had jurisdiction over him in view of s. 3(3) of the Act and that only the Syariah Court had jurisdiction in respect of matters ancillary to the divorce. The petitioner, on the other hand, contended that since she remained a non-Muslim, she could not come under the jurisdiction of the Syariah Court. Hence, the High Court should continue to exercise its jurisdiction in the matter. In this regard, she contended that s. 3(3) was unconstitutional insofar as it prevented the High Court from granting her the order for ancillary reliefs, as she would effectively have no remedy in law against the respondent. Arising from the above issues, the Judicial Commissioner referred the following questions for our opinion:

(1) Is s. 3 of the Law Reform (Marriage & Divorce) Act 1976 unconstitutional, in the light of Articless 11(1) and 121(1A) of the Federal Constitution?
(2) Is the High Court entitled to exercise its continuing jurisdiction to grant ancillary

relief, in view of the fact that the High Court had dissolved the marriage?

After hearing Counsel, we answered the above question (1) in the negative and question (2) in the affirmative. On question (2), based on the facts in this reference, we confirmed that the High Court has jurisdiction to hear the petitioner's application for ancillary reliefs under the Act, notwithstanding the respondent's conversion to Islam after the divorce.

We shall deal first with question (2). In practical terms, we are asked to decide, in view of s. 3(3) of the Act, whether the High Court has jurisdiction to continue to hear the petitioner's application for ancillary reliefs under ss. 76 and 77 of the Act against the respondent, who converted to Islam after the dissolution of their non-Muslim marriage. There are two main reasons why we form the opinion that, on the facts of the reference, the High Court has jurisdiction to continue to hear the application.

Section 3 of the Act states as follows:

(1) Except as is otherwise expressly provided this Act shall apply to all persons in Malaysia and to all persons domiciled in Malaysia but are resident outside Malaysia.

(2) For the purposes of this Act, a person who is a citizen of Malaysia shall be deemed, until the contrary is proved, to be domiciled in Malaysia.

(3) **This Act shall not apply to a Muslim** or to any person who is married under Muslim law and no marriage of one of the parties which professes the religion of Islam shall be solemnised or registered under this Act; but nothing herein shall be construed to prevent a Court before which a petition for divorce has been made under s. 51 from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam. (Emphasis added).

(4) ...

The purpose for which the Act was enacted is set out in the title which is "an Act to provide for monogamous marriages and the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce and to provide for matters incidental thereto." Parts III and IV of the Act deal with marriages and solemnisation and registration of marriages. It should be noted that s. 48 stipulates that nothing in the Act shall authorise the Court to make a decree of divorce except where the marriage has been registered or deemed to be registered under the Act or where the marriage between the parties was contracted under a law providing for monogamous marriage. This section seems to fortify the legislative purpose as set out in the title of the Act. Next, we have Part VI, comprising, *inter alia*, ss. 51 and 53, which deal with divorce.

The legislative intention of s. 3 must be construed within the framework and the general purpose of the Act. With that in mind, the Legislature by enacting s. 3 clearly intended to specify the persons to whom the Act applies or does not apply. Thus, by s. 3(1), except as otherwise expressly provided, the Act applies to all persons in Malaysia and those domiciled in Malaysia. Section 3(3) provides that the Act shall not apply to Muslims or Muslim marriages and that only non-Muslim marriages may be solemnised or registered. This clearly means that the Act only applies to non-Muslims and non-Muslim marriages. In the present reference, it is common ground that both parties were non-Muslims who contracted a non-Muslim marriage. The High Court dissolved the said marriage and thereafter the petitioner filed an ancillary application under ss. 76 and 77 of the Act. From the above facts, it is without doubt that the Act applies to them since they were non-Muslims. It follows that as the petitioner's application under ss. 76 and 77 concerned matters affecting both parties' legal obligations as non-Muslims and incidental to the granting of the divorce, the High Court would have jurisdiction to hear and determine the ancillary proceedings despite the fact that the respondent converted to Islam after divorce but before the hearing of the ancillary application. For the above reasons, we cannot agree with the respondent's contention that in view of the opening words of sub-section (3) that "The Act shall not apply to a Muslim ...", the High Court ceased to have jurisdiction over him upon his conversion to Islam. It is noted that the High Court exercised its jurisdiction in this matter under s. 24(a) of the Courts of Judicature Act 1964 which states that the jurisdiction of the High Court shall include:

(a) jurisdiction under any written law relating to divorce and matrimonial matters ...

In our opinion, the words "any written law relating to divorce and matrimonial matters" must include the Act because the High Court may derive jurisdiction in matrimonial matters under some other law, e.g. under s. 9, the Married Women and Children Maintenance Act 1950 (Revised 1981).

Secondly, the second part of s. 3(3) makes reference to s. 51 of the Act.

It states:

> ... but nothing herein shall be construed to prevent a Court before which a petition for divorce has been made under s. 51, from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam ...

Under s. 51, where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce and the Court, upon dissolving the marriage, may make provision for the wife or husband and for the support, care and custody of the children of the marriage and may attach any condition to the decree of dissolution. The Legislature, by enacting s. 51, clearly envisaged a situation that where one party to a non-Muslim marriage converted to Islam, the other party who has not converted may petition to the High Court for divorce and seek ancillary reliefs. In another word, the conversion to Islam of one party to a non-Muslim marriage is made a ground for the other party to apply to the High Court for divorce and ancillary reliefs. Further, it would seem to us that Parliament, in enacting subsection 51(2), must have had in mind to give protection to non-Muslim spouses and children of the marriage against a Muslim convert. Perhaps, in its desire to accord such protection of the law, it failed to foresee a situation such as in the present reference where the parties remained non-Muslims until after the marriage was dissolved, and then one party converted to Islam. Neither the language of s. 3 nor s. 51 is sufficiently precise in dealing with the issue of the jurisdiction of the High Court in the circumstance. From the wordings of s. 51(2), the Legislature clearly intended to provide ancillary reliefs for non-Muslim spouses and the children of the marriage as a result of one party's conversion to Islam. In our opinion, by implication from s. 51(2) above, the High Court, in the present reference, has jurisdiction to hear and determine the ancillary issues. The implications may arise from the language used, from the context or from the application of some external rule. They are of equal force, whatever their derivation. **(Bennion's Statutory Interpretation**, 2nd Edn. 1992 p. 362). It would result in grave injustice to non-Muslim spouses and children whose only remedy would be in the civil Courts if the High Court no longer has jurisdiction, since the Syariah Courts do not have jurisdiction over non-Muslims. In the context of the legislative intent of s. 3 and the overall purpose of the Act, the respondent's legal obligations under a non-Muslim marriage cannot surely be extinguished or avoided by his conversion to Islam.

It has been said that since the 17th century, it has been the task of the judiciary to interpret an Act "according to the intent of them that made it": **Coke 4 Inst. 330**. Indeed, this is the approach we adopt in this reference. In *Northman v. Barnet Council* [1978] 1 WLR 221, Lord Denning MR stated (at p. 228):

> In all cases now in the interpretation of statutes, we adopt such a construction as will 'promote the general legislative purpose' underlying the provision. It is no longer necessary for Judges to wring their hands and say: 'There is nothing we can do about it'. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the Judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind.

In the course of the arguments, Encik Pawancheek, learned Counsel for the respondent, referred us to a decision of the Kuala Lumpur High Court in *Letchumy v. Ramadason* [1984] 1 MLJ 143, in support of his argument that no ancillary relief can be granted to the petitioner as she obtained her divorce on the ground of irretrievable breakdown of marriage (s. 53). In *Letchumy*, the learned Judge held that since the petitioner obtained her divorce on the ground of desertion, the Court's power to grant maintenance must stem from the general power granted by s. 77, and not under s. 51(2). That being the case, any limitation to the application of the provisions of s. 77 must be considered in the light of s. 3(3) of the Act. According to the learned Judge, s. 3(3) of the Act precluded the operation of the provisions of s. 77 to a Muslim and as the respondent was a Muslim, the Act could not be made to apply to him. He also held

that it would have been different if the divorce had in fact been granted under s. 51 on the ground of the respondent's conversion to Islam. With respect, it would appear to us that this case was decided without the benefit of a full argument on s. 3 of the Act. The learned Judge merely referred to the section and concluded:

> As I see it, sub-section (3) precludes the operation of the provisions of s. 77 to a Muslim and as the respondent is now a Muslim, I do not think they can be made to apply to him.

Be that as it may, in the circumstances, we consider *Letchumy* was wrongly decided.

We turn next to question (1) of the reference. We would state that in the light of our reasons given on question (2) above, s. 3 of the Act is not unconstitutional. We would go on to say that insofar as the Act shall not apply to Muslims (s.3(3)), this is consistent with Article 11(1) of the Constitution which provides that every person has the right to profess and practise his religion. On the effect of Article 121(1A) of the Constitution on the jurisdiction of the High Court *vis-a-vis* the present ancillary application, we do not propose to go into a historical survey as this constitutional question has been fully discussed by this Court in *Dalip Kaur v. Pegawai Polis Daerah Bukit Mertajam & Anor.* [1992] 1 SCR 257 and *Mohd. Habibullah bin Mahmood v. Faridah bt Dato' Talib* [1993] 1 SCR 229. Suffice it to say that the new cl. 1A of Article 121 (amended by Act A704 of 1988) effective from 10 January 1988 has taken away the jurisdiction of the High Courts in respect of matters falling within the jurisdiction of the Syariah Courts. This Article provides that as from 10 January 1988, the High Courts in Malaya and Borneo shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Court. The jurisdiction of the Syariah Courts is defined in the Ninth Schedule, List II - the State List of the Constitution which has jurisdiction in respect of Islamic law and personal and family law of persons professing the religion of Islam. In the present reference, s. 45(3) of the Selangor Administration of Muslim Law Enactment 1952 applies because the Enactment applied to Kuala Lumpur before it became a Federal Territory. It has now been replaced by the Administration of Islamic Law (Federal Territories) Act 1993. Be that as it may, under s. 45(3)(b), it is provided that the Court of Kathi Besar or Timbalan Kathi Besar shall in its civil jurisdiction hear and determine all actions and proceedings in which all the parties profess the Muslim religion and which relate, *inter alia*, to any disposition of, or claim to, property arising out of marriage or divorce, or to maintenance or division of claims to sapencharian property. It is thus clear from the above section that the Syariah Court Kuala Lumpur would not have jurisdiction over the petitioner who is a non-Muslim. It follows that Article 121(1A) of the constitution does not affect the jurisdiction of the High Court to hear the application under ss. 76 and 77 of the Act.

Finally, we note in passing that Encik Pawancheek, in his written submission, attempted to canvas this constitutional issue in the light of the word "religion" in Article 11(1) of the Constitution. According to him, insofar as this Article applies to non-Muslims, the word "religion" is restricted to the definition of religion as propounded by Judges from other jurisdictions in the cases cited by Counsel. For our part, we do not consider it important to discuss these cases in view of our answer to the two questions posed in this reference. We would, nonetheless, thank Counsel for his efforts in "getting up" these authorities.

In the result, we remitted the case to the High Court below for final disposal of the ancillary application.